IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 153 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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DEVSHI GHANA GOJIYA - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MM TIRMIZI for Applicant(s) : 1,
Ms Mita Panchal Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PREMAL S RACHH for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 19/09/2007

ORAL JUDGMENT

1. The petitioner, the original complainant has filed this application under section 397 read with section 401 of Criminal Procedure Code and challenged the order passed by Addl. Sessions Judge Fast Track Court No. I Kambaliya on 10.1.07 below application Exh 97 filed by him to summon a witness who treated and operated the injured but not cited as witness in the charge sheet.

2. The respondents are being prosecuted for the offence punishable under section 326 of I.P. Code arising out of offence registered as I C.R No.

11/04 at Kalyanpur police station. The prosecution started adducing evidence and examined Dr. R.G Dutta who had treated the injured witnesses. The prosecution also produced documentary evidence relating to the medical treatment given to the injured and those treatment papers were admitted by the respondents. Petitioner filed application Exh 97 to summon witness Dr. S.N Kacheriyala interalia contending that injured Laka Khimaji and Devshi Ghana were treated as indoor patients in the hospital and Dr. R.G Dutta who examined the two injured has been examined as witness but he has not treated the injured. The investigating officer has not shown the doctor who treated the injured and performed operation as witness in the charge sheet and therefore in the interest of justice the doctor is required to be examined as witness in the case.

3. After hearing learned APP and learned advocate for the accused the learned trial judge rejected this application and therefore the present revision application has been filed by the original complainant challenging the impugned order.

4. I have heard learned advocate Mr. Tirmizi for the petitioner and learned advocate Mr. Rachh for respondent and learned APP Ms Panchal for State.

5. It is not in dispute that the Doctor who is

sought to be examined has not been shown as witness in the charge sheet. The application to summon the witness does not indicate that the witness is necessary for just decision of the case. It also appears that the witness sought to be examined had treated the injured and in order to prove the injuries the Doctor is required to be examined. The medical treatment papers of both the injured are on record and all these documents have been admitted in evidence with the consent of the respondent accused. It is not a ground to call the witness to prove those documents. In view of the fact that the documents relating to the injury and treatment given to the injured are already on record and exhibited, it is not necessary to examine the doctor to prove injuries and treatment given to the injured. It also appears from the impugned order that the witness sought to be examined is not necessary witness. Therefore, in my view the learned trial judge did not commit any error in passing the impugned order.

6. The learned advocate for the petitioner has relied upon the decision of **Rajendra Prasad Vs Narcotic Cell reported in AIR 1999 Supreme Court 2292.** Learned advocate for the respondent Mr. Rachh has also relied upon the said decision. In this decision Hon'ble Supreme Court observed that in a trial no party can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on

record due to any inadvertence the court should be magnanimous in permitting such errors to be corrected. There cannot be any dispute with regard to the principle laid down in the said decision. However, in view of the fact that the documents relating to the injury have already been exhibited, there is no error on the record of the case which is required to be corrected. Therefore, the learned trial judge was justified in passing the impugned order.

7. Learned advocate for the petitioner has failed to point out that the learned trial judge committed jurisdictional error in passing the impugned order or that the order is otherwise erroneous and perverse.

8. In view of above, revision application fails and stands dismissed. Rule stands discharged.

(Bankim N. Mehta,J)

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